

AMENDED IN ASSEMBLY AUGUST 21, 2006

AMENDED IN ASSEMBLY JUNE 20, 2006

AMENDED IN SENATE MAY 26, 2006

AMENDED IN SENATE APRIL 18, 2006

AMENDED IN SENATE MARCH 30, 2006

SENATE BILL

No. 1205

Introduced by Senator Escutia

(Coauthors: Assembly Members Goldberg, Koretz, Laird, *Lieu*,
Oropeza, and Pavley)

January 25, 2006

An act to amend Sections 39674, 42400, 42400.1, 42400.2, 42400.3.5, 42400.7, 42401, 42402, 42402.1, 42402.2, 42402.4, and 42403 of, to add Sections 39604.3, 42409.5, and 42402.6 to, and to repeal Section 42400.4 of the Health and Safety Code, relating 42400.3, 42400.3.5, 42400.6, 42401, 42402, 42402.1, 42402.2, 42402.3, and 42402.4 of, and to add Sections 39604.3, 42400.9, 42402.4.5, and 42402.6 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1205, as amended, Escutia. Air pollution: Children's Breathing Rights Act: penalties.

(1) Existing law vests local and regional authorities, defined as the governing body of any city, county, or air pollution control district or air quality management district, with the primary responsibility for control of air pollution from all sources other than vehicular sources. Existing law establishes maximum criminal and civil penalties for any

person, as defined, for violations of air pollution laws from nonvehicular sources. ~~Existing law defines a Title V source as a stationary source required by federal law to be included in an operating permit program established pursuant to Title V of the federal Clean Air Act.~~

This bill would enact the Children's Breathing Rights Act, which would increase the maximum penalties for specified violations of air pollution laws ~~from nonvehicular sources to \$10,000, and to \$50,000 in the case of Title V sources, as provided. The bill would, on and after June 1, 2007, assess an additional civil penalty of not more than \$100,000 per day for each violation committed by a serious violator, as defined, of specified nonvehicular air pollution laws. The bill would punish specified violations of air pollution laws that result in substantial risk of actual injury, as specified. The bill would punish making certain fake statements, representations, or certifications with intent to deceive, as specified.~~ The bill would require the state board to post on its Internet Web site information on air quality violations, as specified. The bill would require the districts to report to the state board ~~enforcement data relating to air quality violations this information and jointly develop with the state board a format for presenting this information, as specified. The bill would authorize districts to direct a portion of settlement funds to a program of financial assistance established in each district, known as the Children's Breathing Rights Fund. The bill would specify uses for this money.~~

Because this bill would impose new duties on local air districts, this bill would create a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as
2 the Children's Breathing Rights Act.

3 SEC. 2. (a) The Legislature finds and declares all of the
4 following:

5 (1) Breathing clean and healthy air is a right of all
6 Californians, especially our children, whose health suffers
7 disproportionately when our air is polluted.

8 (2) Reduced lung growth and function, new asthma cases,
9 respiratory complications for asthmatics, and increased school
10 absences from respiratory illnesses are just some of the
11 consequences our children face if we fail to protect that right.

12 (3) The most recent available state and federal data reveal that
13 more than 245 million pounds of industrial air pollution were
14 emitted near California schools in 1995. Statewide, more than 2.8
15 million children were enrolled in schools located near reported
16 air emissions of carcinogens, reproductive toxins, heavy metals,
17 nitrogen oxides, sulfur dioxide, or particulate matter.

18 ~~(4) The state board is currently statutorily required to post, on~~
19 ~~its Internet Web site, only summary information every two years.~~
20 ~~Publicly accessible information regarding air pollution is~~
21 ~~therefore inadequate.~~

22 ~~(5) If we improve the enforcement~~

23 (4) *If we improve the statutes penalizing violations* of our air
24 quality laws and ensure that penalties are not so low as to be a
25 minor inconvenience to a serious air polluter, our children's right
26 to clean and healthy air can be better protected, as can the right to
27 environmental justice provided in Section 65040.12 of the
28 Government Code, that is, the fair treatment of people of all
29 races, cultures, and income with respect to the enforcement of
30 environmental laws, regulations, and policies. If we improve the
31 enforcement of our air quality laws, we will avoid future
32 economic and social costs of air pollution.

33 (b) It is the intent of the Legislature to *improve compliance*
34 *with air quality laws, to* increase penalties for serious violators of
35 air pollution laws and to use enhanced penalties to improve air
36 pollution enforcement activities, to create a statewide database
37 that would provide transparency regarding violations, including
38 serious violations, to help fund local children's health initiatives,

1 and to help fund asthma asthma care management and asthma
2 prevention activities, and other programs or activities addressing
3 health problems related to air pollution in schools and local
4 communities.

5 *SEC. 3. Section 39604.3 is added to the Health and Safety*
6 *Code, to read:*

7 *39604.3. (a) (1) Notwithstanding Section 39604, the state*
8 *board shall post on its Internet Web site, by January 1, 2008, and*
9 *by January 1 of each year thereafter, the same information on air*
10 *quality violations that the districts provide to the United States*
11 *Environmental Protection Agency. The state board shall also*
12 *provide a link on its Internet Web site to the Internet Web sites of*
13 *the districts. To protect confidentiality, the state board may*
14 *require a password for certain areas of their Internet Web site.*

15 *(2) Each district shall submit the information described in*
16 *paragraph (1) to the state board, and the state board and the*
17 *districts shall jointly develop a format for presenting this*
18 *information. The format shall ensure that the data is presented in*
19 *an open and transparent manner that is, to the greatest extent*
20 *possible, readily accessible to, and understandable by, the public*
21 *and that is compatible with enforcement data provided by other*
22 *state environmental agencies.*

23 *(b) (1) Commencing January 1, 2008, every judgment entered*
24 *in an action brought by a district and every final settlement*
25 *agreement entered into by a district to enforce any provision of*
26 *law that is administered by the district shall be posted on the*
27 *district's Internet Web site, if the judgment or settlement*
28 *agreement is in the public record.*

29 *(2) Paragraph (1) shall apply only to districts with a*
30 *population greater than one million. A district with a population*
31 *of less than one million that maintains an Internet Web site shall*
32 *either comply with paragraph (1) or post a statement on its*
33 *Internet Web site informing the public how to request*
34 *information in the public record regarding judgments and*
35 *settlement agreements.*

36 *(3) For the purposes of this subdivision, a judgment or*
37 *settlement agreement is final when the time for judicial review*
38 *has expired, or when all means of judicial review have been*
39 *exhausted.*

1 (4) A judgment or settlement agreement posted pursuant to
2 this subdivision shall be posted for not less than one year.

3 SEC. 4. Section 39674 of the Health and Safety Code is
4 amended to read:

5 39674. (a) Except as otherwise provided in subdivision (b),
6 any person who violates any rule or regulation, emission
7 limitation, or permit condition adopted pursuant to Section 39659
8 or Article 4 (commencing with Section 39665) or which is
9 implemented and enforced as authorized by subdivision (b) of
10 Section 39658 is strictly liable for a civil penalty not to exceed
11 ~~one thousand dollars (\$1,000)~~ *ten thousand dollars (\$10,000)* for
12 each day ~~in~~ *during any portion of* which the violation occurs.

13 (b) (1) Any person who violates any rule or regulation,
14 emission limitation, permit condition, order fee requirement,
15 filing requirement, duty to allow or carry out inspection or
16 monitoring activities, or duty to allow entry for which delegation
17 or approval of implementation and enforcement authority has
18 been obtained pursuant to subdivision (l) of Section 112 of the
19 Clean Air Act (42 U.S.C. Section 7412(l)) or the regulations
20 adopted pursuant thereto, adopted pursuant to Section 39659 or
21 Article 4 (commencing with Section 39665) or which is
22 implemented and enforced as authorized by subdivision (b) of
23 Section 39658 is strictly liable for a civil penalty not to exceed
24 ~~ten thousand dollars (\$10,000)~~ *fifty thousand dollars (\$50,000)*
25 for each day ~~in~~ *during any portion of* which the violation occurs.

26 (2) Where a civil penalty in excess of ~~one thousand dollars~~
27 ~~(\$1,000)~~ *five thousand dollars (\$5,000)* for each day of violation
28 is sought, there is no liability under *subdivision (a) or paragraph*
29 ~~(1) for an amount above five thousand dollars (\$5,000) for each~~
30 ~~day during any portion of which a violation occurs,~~ if the person
31 accused of the violation alleges by affirmative defense and
32 establishes that the violation is caused by an act which was not
33 the result of intentional or negligent conduct. In a district in
34 which a Title V permit program has been fully approved, this
35 paragraph shall not apply to a violation of federally enforceable
36 requirements that occur at a Title V source.

37 (3) Paragraph (2) shall not apply to a violation of a toxic air
38 contaminant rule, regulation, permit, order, fee requirement,
39 filing requirement, duty to allow or carry out inspection or
40 monitoring activities, or duty to allow entry for which delegation

1 or approval of implementation and enforcement authority has
2 been obtained pursuant to subdivision (l) of Section 112 of the
3 Clean Air Act (42 U.S.C. Sec. 7412(l)), or the regulations
4 adopted pursuant thereto.

5 *SEC. 5. Section 42400 of the Health and Safety Code is*
6 *amended to read:*

7 42400. (a) Except as otherwise provided in Section 42400.1,
8 42400.2, 42400.3, 42400.3.5, or 42400.4, any person who
9 violates this part, or any rule, regulation, permit, or order of the
10 state board or of a district, including a district hearing board,
11 adopted pursuant to Part 1 (commencing with Section 39000) to
12 Part 4 (commencing with Section 41500), inclusive, is guilty of a
13 misdemeanor and is subject to a fine of not more than ~~one~~
14 ~~thousand dollars (\$1,000)~~ *ten thousand dollars (\$10,000)* or
15 imprisonment in the county jail for not more than six months, or
16 both.

17 (b) If a violation under subdivision (a) with regard to the
18 failure to operate a vapor recovery system on a gasoline cargo
19 tank is directly caused by the actions of an employee under the
20 supervision of, or of any independent contractor working for, any
21 person subject to this part, the employee or independent
22 contractor, as the case may be, causing the violation is guilty of a
23 misdemeanor and is punishable as provided in subdivision (a).
24 That liability shall not extend to the person employing the
25 employee or retaining the independent contractor, unless that
26 person is separately guilty of an action that violates this part.

27 (c) *Any person who owns or operates any source of air*
28 *contaminants in violation of Section 41700 that causes a*
29 *substantial risk of actual injury, as defined in subdivision (e), to*
30 *another person, whether the risk of injury is immediate or in the*
31 *future, is guilty of a misdemeanor and is subject to a fine of not*
32 *more than twenty-five thousand dollars (\$25,000) or*
33 *imprisonment in the county jail for not more than nine months or*
34 *both.*

35 ~~(e)~~

36 (d) Any person who owns or operates any source of air
37 contaminants in violation of Section 41700 that causes actual
38 injury, as defined in subdivision ~~(d)~~ (e), ~~to the health or safety of~~
39 ~~a considerable number of persons or the public~~ *another person*, is
40 guilty of a misdemeanor and is subject to a fine of not more than

1 ~~fifteen thousand dollars (\$15,000)~~ *fifty thousand dollars*
2 *(\$50,000)* or imprisonment in the county jail for not more than
3 nine months, or both.

4 ~~(d)~~

5 (e) As used in this section, “actual injury” means any physical
6 injury that, in the opinion of a licensed physician and surgeon,
7 requires medical treatment involving more than a physical
8 examination.

9 ~~(e)~~

10 (f) Each day during any portion of which a violation of
11 subdivision (a) ~~or~~, (c), or (d) occurs is a separate offense.

12 *SEC. 6. Section 42400.1 of the Health and Safety Code is*
13 *amended to read:*

14 42400.1. (a) Any person who negligently emits an air
15 contaminant in violation of any provision of this part or any rule,
16 regulation, permit, or order of the state board or of a district
17 pertaining to emission regulations or limitations is guilty of a
18 misdemeanor and is punishable by a fine of not more than
19 twenty-five thousand dollars (\$25,000), or imprisonment in a
20 county jail for not more than nine months, ~~or by both that fine~~
21 ~~and imprisonment.~~

22 (b) *Any person who negligently emits an air contaminant in*
23 *violation of Section 41700 that causes a substantial risk of actual*
24 *injury, as defined in subdivision (e) of Section 42400, to another*
25 *person, whether the risk of injury is immediate or in the future, is*
26 *guilty of a misdemeanor and is punishable by a fine of not more*
27 *than fifty thousand dollars (\$50,000) or imprisonment in the*
28 *county jail for not more than nine months, or both.*

29 (c) *Any person who negligently emits an air contaminant in*
30 *violation of Section 41700 that causes actual injury, as defined in*
31 *subdivision (e) of Section 42400, to another person, is guilty of a*
32 *misdemeanor and is punishable by a fine of not more than*
33 *seventy-five thousand dollars (\$75,000) or imprisonment in the*
34 *county jail for not more than nine months, or both.*

35 ~~(b)~~

36 (d) Any person who negligently emits an air contaminant in
37 violation of Section 41700 that causes great bodily injury, as
38 defined by Section 12022.7 of the Penal Code, to, or death of,
39 any person, is guilty of a misdemeanor and is punishable by a
40 fine of not more than one hundred thousand dollars (\$100,000),

1 or imprisonment in a county jail for not more than one year, or
2 ~~by both that fine and imprisonment.~~

3 (e)

4 (e) Each day during any portion of which a violation occurs is
5 a separate offense.

6 *SEC. 7. Section 42400.2 of the Health and Safety Code is*
7 *amended to read:*

8 42400.2. (a) Any person who emits an air contaminant in
9 violation of any provision of this part, or any order, rule,
10 regulation, or permit of the state board or of a district pertaining
11 to emission regulations or limitations, and who knew of the
12 emission and failed to take corrective action within a reasonable
13 period of time under the circumstances, is guilty of a
14 misdemeanor and is punishable by a fine of not more than forty
15 thousand dollars (\$40,000), or imprisonment in a county jail for
16 not more than one year, ~~or by both that fine and imprisonment.~~

17 (b) For purposes of this section, “corrective action” means the
18 termination of the emission violation or the grant of a variance
19 from the applicable order, rule, regulation, or permit pursuant to
20 Article 2 (commencing with Section 42350). If a district
21 regulation regarding process upsets or equipment breakdowns
22 would allow continued operation of equipment which is emitting
23 air contaminants in excess of allowable limits, compliance with
24 that regulation is deemed to be corrective action.

25 (c) *Any person who owns or operates any source of air*
26 *contaminants in violation of Section 41700 that causes a*
27 *substantial risk of actual injury, as defined in subdivision (e) of*
28 *Section 42400, to another person, whether the risk of injury is*
29 *immediate or in the future, and who knew of the discharge and*
30 *failed to take corrective action within a reasonable period of*
31 *time under the circumstances, is guilty of a misdemeanor and is*
32 *subject to a fine of not more than seventy-five thousand dollars*
33 *(\$75,000), or imprisonment in the county jail for not more than*
34 *nine months, or both.*

35 (d) *Any person who owns or operates any source of air*
36 *contaminants in violation of Section 41700 that causes actual*
37 *injury, as defined in subdivision (e) of Section 42400, to another*
38 *person, and who knew of the discharge and failed to take*
39 *corrective action within a reasonable period of time under the*
40 *circumstances, is guilty of a misdemeanor and is subject to a fine*

1 *of not more than one hundred thousand dollars (\$100,000), or*
2 *imprisonment in the county jail for not more than nine months, or*
3 *both.*

4 ~~(e)~~

5 *(e) Any person who owns or operates any source of air*
6 *contaminants in violation of Section 41700 that causes great*
7 *bodily injury, as defined by Section 12022.7 of the Penal Code,*
8 *to, or death of, any person, and who knew of the emission and*
9 *failed to take corrective action within a reasonable period of time*
10 *under the circumstances, is guilty of a misdemeanor and is*
11 *punishable by a fine of not more than two hundred fifty thousand*
12 *dollars (\$250,000), or imprisonment in a county jail for not more*
13 *than one year, or by both that fine and imprisonment.*

14 ~~(d)~~

15 *(f) Each day during any portion of which a violation occurs*
16 *constitutes a separate offense.*

17 *SEC. 8. Section 42400.3 of the Health and Safety Code is*
18 *amended to read:*

19 *42400.3. (a) Any person who willfully and intentionally*
20 *emits an air contaminant in violation of any provision of this part*
21 *or any rule, regulation, permit, or order of the state board or of a*
22 *district, pertaining to emission regulations or limitations, is guilty*
23 *of a misdemeanor and is punishable by a fine of not more than*
24 *seventy-five thousand dollars (\$75,000), or imprisonment in a*
25 *county jail for not more than one year, or by both that fine and*
26 *imprisonment.*

27 *(b) Any person who willfully and intentionally, or with*
28 *reckless disregard for the risk of causing actual injury, as*
29 *defined in subdivision (e) of Section 42400, emits an air*
30 *contaminant in violation of Section 41700 that causes a*
31 *substantial risk of actual injury to another person, whether the*
32 *risk of injury is immediate or in the future, is guilty of a*
33 *misdemeanor and is punishable by a fine of not more than one*
34 *hundred thousand dollars (\$100,000), or imprisonment in a*
35 *county jail for not more than one year, or both.*

36 *(c) Any person who willfully and intentionally, or with reckless*
37 *disregard for the risk of causing actual injury, as defined in*
38 *subdivision (e) of Section 42400, emits an air contaminant in*
39 *violation of Section 41700 that causes actual injury to another*
40 *person, is guilty of a misdemeanor and is punishable by a fine of*

1 *not more than one hundred twenty-five thousand dollars*
2 *(\$125,000), or imprisonment in a county jail for not more than*
3 *one year, or both. However, if the defendant is a corporation, the*
4 *maximum fine is two hundred fifty thousand dollars (\$250,000).*

5 ~~(b)~~

6 *(d) Any person who willfully and intentionally, or with*
7 *reckless disregard for the risk of great bodily injury, as defined*
8 *by Section 12022.7 of the Penal Code, to, or death of, any*
9 *person, emits an air contaminant in violation of Section 41700*
10 *that results in any unreasonable risk of great bodily injury to, or*
11 *death of, any person, is guilty of a public offense and is*
12 *punishable by a fine of not more than ~~one hundred twenty-five~~*
13 *~~thousand dollars (\$125,000) one hundred fifty thousand dollars~~*
14 *(\$150,000), or imprisonment in a county jail for not more than*
15 *one year, or ~~by both that fine and imprisonment.~~ However, if the*
16 *defendant is a corporation, the maximum fine ~~may be up to~~ is*
17 *five hundred thousand dollars (\$500,000).*

18 ~~(e)~~

19 *(e) Any person who willfully and intentionally, or with*
20 *reckless disregard for the risk of great bodily injury, as defined*
21 *by Section 12022.7 of the Penal Code, to, or death of, any person*
22 *emits an air contaminant in violation of Section 41700 that*
23 *causes great bodily injury to, or death of, any person is guilty of*
24 *a public offense, and is punishable by a fine of not more than ~~two~~*
25 *~~hundred fifty thousand dollars (\$250,000) five hundred thousand~~*
26 *dollars (\$500,000), or imprisonment in a county jail for not more*
27 *than one year, or both that fine and imprisonment, or is*
28 *punishable by a fine of not more than ~~two hundred fifty thousand~~*
29 *~~dollars (\$250,000) five hundred thousand dollars (\$500,000), or~~*
30 *imprisonment in the state prison, or by both that fine and*
31 *imprisonment. If the defendant is a corporation, the maximum*
32 *fine ~~may be up to~~ is one million dollars (\$1,000,000).*

33 ~~(d)~~

34 *(f) Each day during any portion of which a violation occurs*
35 *constitutes a separate offense.*

36 ~~(e)~~

37 *(g) This section does not preclude punishment under Section*
38 *189 or 192 of the Penal Code or any other provision of law that*
39 *provides a more severe punishment.*

40 ~~(f)~~

1 (h) For the purposes of this section:

2 (1) “Great bodily injury” means great bodily injury as defined
3 by Section 12022.7 of the Penal Code.

4 (2) “Imprisonment in state prison” means imprisonment in the
5 state prison for 16 months, or two or three years.

6 (3) “Unreasonable risk of great bodily injury or death” means
7 substantial probability of great bodily injury or death.

8 *SEC. 9. Section 42400.3.5 of the Health and Safety Code is*
9 *amended to read:*

10 42400.3.5. (a) Any person who knowingly violates any rule,
11 regulation, permit, order, fee requirement, or filing requirement
12 of the state board or of a district, including a district hearing
13 board, that is adopted for the control of toxic air contaminants
14 pursuant to Part 1 (commencing with Section 39000) to Part 4
15 (commencing with Section 41500), inclusive, and for which
16 delegation or approval of implementation and enforcement
17 authority has been obtained pursuant to subdivision (l) of Section
18 112 of the Clean Air Act (42 U.S.C. Sec. 7412(l)), or the
19 regulations adopted pursuant thereto, is guilty of a misdemeanor
20 and is subject to a fine of not more than ten thousand dollars
21 (\$10,000) or imprisonment in the county jail for not more than
22 six months, or both.

23 (b) (1) Any person who knowingly makes any false material
24 statement, representation, or certification in any form or in any
25 notice or report required by a rule or regulation adopted or permit
26 issued for the control of toxic air contaminants pursuant to Part 1
27 (commencing with Section 39000) to Part 4 (commencing with
28 Section 41500), inclusive, and for which delegation or approval
29 of implementation and enforcement authority has been obtained
30 pursuant to subdivision (l) of Section 112 of the Clean Air Act
31 (42 U.S.C. Sec. 7412(l)), or the regulations adopted pursuant
32 thereto, or who knowingly renders inaccurate any monitoring
33 device required by that toxic air contaminant rule, regulation, or
34 permit is subject to a fine of not more than ~~thirty-five thousand~~
35 ~~dollars—(\$35,000)~~ *fifty thousand dollars (\$50,000)* or
36 imprisonment in the county jail for not more than nine months, or
37 both.

38 (2) *Any person who with the intent to deceive makes any false*
39 *material statement, representation, or certification in any form*
40 *or in any notice or report required by a rule or regulation*

1 *adopted or permit issued for the control of toxic air contaminants*
2 *pursuant to Part 1 (commencing with Section 39000) to Part 4*
3 *(commencing with Section 41500), inclusive, and for which*
4 *delegation or approval of implementation and enforcement*
5 *authority has been obtained pursuant to subdivision (l) of Section*
6 *112 of the federal Clean Air Act or the regulations adopted*
7 *pursuant thereto, or who with an intent to deceive renders*
8 *inaccurate any monitoring device required by that toxic air*
9 *contaminant rule, regulation, or permit, is subject to a fine of not*
10 *more than one hundred thousand dollars (\$100,000) or*
11 *imprisonment in the county jail for not more than one year, or*
12 *both.*

13 (c) Any person who, knowingly and with intent to deceive,
14 falsifies any document required to be kept pursuant to any
15 provision of this part, or any rule, regulation, permit, notice to
16 comply, or order of the state board or of a district, is punishable
17 as provided in *paragraph (2) of subdivision (b).*

18 (d) ~~Subdivisions (a) and (b) shall apply only to those~~
19 ~~violations that are not otherwise subject to a fine of ten thousand~~
20 ~~dollars (\$10,000) or more pursuant to Section 42400.1, 42400.2,~~
21 ~~or 42400.3 Nothing in this section shall preclude prosecution~~
22 ~~under any other law.~~

23 SEC. 10. Section 42400.6 of the Health and Safety Code is
24 amended to read:

25 42400.6. A fine or monetary penalty specified in Section
26 39674; ~~subdivision (a), (b), (d), or (e) of, subdivisions (a) and (b)~~
27 ~~of Section 42400;, Section 42402;, or subdivision (a) of Section~~
28 44381 of this code, that may be imposed as the result of conduct
29 that is also subject to Chapter 5 (commencing with Section
30 17200) of Part 2 of Division 7 of the Business and Professions
31 Code, may be collected either under those provisions of this
32 code, or under that chapter of the Business and Professions Code,
33 but not under both.

34 SEC. 11. Section 42400.9 is added to the Health and Safety
35 Code, to read:

36 42400.9. An act or omission that is criminally punishable in
37 different ways by different provisions of this article shall be
38 punished under the provision that provides for the highest
39 maximum penalty, but in no case shall the act or omission be
40 punished under more than one provision.

1 *SEC. 12. Section 42401 of the Health and Safety Code is*
2 *amended to read:*

3 42401. ~~Any~~ *Except as otherwise provided in subdivision (b)*
4 *of Section 42402, any person who intentionally or negligently*
5 *violates any order of abatement issued by a district pursuant to*
6 *Section 42450, by a hearing board pursuant to Section 42451, or*
7 *by the state board pursuant to Section 41505 is liable for a civil*
8 *penalty of not more than twenty-five thousand dollars (\$25,000)*
9 *for each day in which the violation occurs.*

10 *SEC. 13. Section 42402 of the Health and Safety Code is*
11 *amended to read:*

12 42402. (a) Except as provided in Sections 42402.1, 42402.2,
13 42402.3, and 42402.4, any person who violates this part, any
14 order issued pursuant to Section 42316, or any rule, regulation,
15 permit, or order of a district, including a district hearing board, or
16 of the state board issued pursuant to Part 1 (commencing with
17 Section 39000) to Part 4 (commencing with Section 41500),
18 inclusive, is strictly liable for a civil penalty of not more than ~~one~~
19 ~~thousand dollars (\$1,000)~~ *ten thousand dollars (\$10,000).*

20 (b) (1) Any person who violates any provision of this part,
21 any order issued pursuant to Section 42316, or any rule,
22 regulation, permit or order of a district, including a district
23 hearing board, or of the state board issued pursuant to Part 1
24 (commencing with Section 39000) to Part 4 (commencing with
25 Section 41500), inclusive, is strictly liable for a civil penalty of
26 not more than ~~ten thousand dollars (\$10,000)~~ *fifty thousand*
27 *dollars (\$50,000).*

28 (2) (A) If a civil penalty in excess of ~~one thousand dollars~~
29 ~~(\$1,000)~~ *five thousand dollars (\$5,000)* for each day in which a
30 violation occurs is sought, there is no liability under ~~this~~
31 *subdivision (a) or paragraph (1) for an amount above five*
32 *thousand dollars (\$5,000) for each day during any portion of*
33 *which a violation occurs, if the person accused of the violation*
34 *alleges by affirmative defense and establishes that the violation*
35 *was caused by an act that was not the result of intentional nor*
36 *negligent conduct.*

37 (B) Subparagraph (A) shall not apply to a violation of
38 federally enforceable requirements that occur at a Title V source
39 in a district in which a Title V permit program has been fully
40 approved.

1 (C) Subparagraph (A) does not apply to a person who is
2 determined to have violated an annual facility emissions cap
3 established pursuant to a market based incentive program
4 adopted by a district pursuant to subdivision (b) of Section
5 39616.

6 *(c) Any person who owns or operates any source of air*
7 *contaminants in violation of Section 41700 that causes a*
8 *substantial risk of actual injury, as defined in subdivision (e) of*
9 *Section 42400, to another person, whether the risk of injury is*
10 *immediate or in the future, is liable for a civil penalty of not*
11 *more than twenty-five thousand dollars (\$25,000).*

12 ~~(e)~~

13 *(d) Any person who owns or operates any source of air*
14 *contaminants in violation of Section 41700 that causes actual*
15 *injury, as defined in subdivision ~~(d)~~ (e) of Section 42400, to the*
16 *health and safety of a considerable number of persons or the*
17 *public another person, is liable for a civil penalty of not more*
18 *than ~~fifteen thousand dollars (\$15,000)~~ fifty thousand dollars*
19 *(\$50,000).*

20 ~~(d)~~

21 *(e) Each day during any portion of which a violation occurs is*
22 *a separate offense.*

23 *SEC. 14. Section 42402.1 of the Health and Safety Code is*
24 *amended to read:*

25 42402.1. (a) Any person who negligently emits an air
26 contaminant in violation of this part or any rule, regulation,
27 permit, or order of the state board or of a district, including a
28 district hearing board, pertaining to emission regulations or
29 limitations is liable for a civil penalty of not more than
30 twenty-five thousand dollars (\$25,000).

31 *(b) Any person who negligently emits an air contaminant in*
32 *violation of Section 41700 that causes a substantial risk of actual*
33 *injury, as defined in subdivision (e) of Section 42400, to another*
34 *person, whether the risk of injury is immediate or in the future, is*
35 *liable for a civil penalty of not more than fifty thousand dollars*
36 *(\$50,000).*

37 *(c) Any person who negligently emits an air contaminant in*
38 *violation of Section 41700 that causes actual injury, as defined in*
39 *subdivision (e) of Section 42400, to another person is liable for a*

1 *civil penalty of not more than seventy-five thousand dollars*
2 *(\$75,000).*

3 ~~(b)~~

4 *(d) Any person who negligently emits an air contaminant in*
5 *violation of Section 41700 that causes great bodily injury, as*
6 *defined by Section 12022.7 of the Penal Code, to any person or*
7 *that causes the death of any person, is liable for a civil penalty of*
8 *not more than one hundred thousand dollars (\$100,000).*

9 ~~(e)~~

10 *(e) Each day during any portion of which a violation occurs is*
11 *a separate offense.*

12 *SEC. 15. Section 42402.2 of the Health and Safety Code is*
13 *amended to read:*

14 *42402.2. (a) Any person who emits an air contaminant in*
15 *violation of any provision of this part, or any order, rule,*
16 *regulation, or permit of the state board or of a district, including*
17 *a district hearing board, pertaining to emission regulations or*
18 *limitations, and who knew of the emission and failed to take*
19 *corrective action, as defined in subdivision (b) of Section*
20 *42400.2, within a reasonable period of time under the*
21 *circumstances, is liable for a civil penalty of not more than forty*
22 *thousand dollars (\$40,000).*

23 *(b) Any person who emits an air contaminant in violation of*
24 *Section 41700 that causes a substantial risk of actual injury, as*
25 *defined in subdivision (e) of Section 42400, to another person,*
26 *whether the risk of injury is immediate or in the future, and who*
27 *knew of the discharge and failed to take corrective action, as*
28 *defined in subdivision (b) of Section 42400.2, within a*
29 *reasonable period of time under the circumstances, is liable for a*
30 *civil penalty of not more than seventy-five thousand dollars*
31 *(\$75,000).*

32 *(c) Any person who emits an air contaminant in violation of*
33 *Section 41700 that causes actual injury, as defined in subdivision*
34 *(e) of Section 42400, to another person, and who knew of the*
35 *discharge and failed to take corrective action, as defined in*
36 *subdivision (b) of Section 42400.2, within a reasonable period of*
37 *time under the circumstances, is liable for a civil penalty of not*
38 *more than one hundred thousand dollars (\$100,000).*

39 ~~(b)~~

1 (d) Any person who owns or operates any source of air
2 contaminants in violation of Section 41700 that causes great
3 bodily injury, as defined by Section 12022.7 of the Penal Code,
4 to any person or that causes the death of any person, and who
5 knew of the emission and failed to take corrective action, as
6 defined in subdivision (b) of Section 42400.2, within a
7 reasonable period of time under the circumstances, is liable for a
8 civil penalty not to exceed two hundred fifty thousand dollars
9 (\$250,000).

10 ~~(e)~~

11 (e) Each day during any portion of which a violation occurs is
12 a separate offense.

13 *SEC. 16. Section 42402.3 of the Health and Safety Code is*
14 *amended to read:*

15 42402.3. (a) Any person who willfully and intentionally
16 emits an air contaminant in violation of this part or any rule,
17 regulation, permit, or order of the state board, or of a district,
18 including a district hearing board, pertaining to emission
19 regulations or limitations, is liable for a civil penalty of not more
20 than seventy-five thousand dollars (\$75,000).

21 (b) *Any person who willfully and intentionally, or with*
22 *reckless disregard for the risk of causing actual injury, as*
23 *defined in subdivision (e) of Section 42400, emits an air*
24 *contaminant in violation of Section 41700 that result in a*
25 *substantial risk of actual injury to another person, whether the*
26 *risk of injury is immediate or in the future, is liable for a civil*
27 *penalty of not more than one hundred thousand dollars*
28 *(\$100,000).*

29 (c) *Any person who willfully and intentionally, or with reckless*
30 *disregard for the risk of causing actual injury, as defined in*
31 *subdivision (e) of Section 42400, emits an air contaminant in*
32 *violation of Section 41700 that results in actual injury to another*
33 *person, is liable for a civil penalty of not more than one hundred*
34 *twenty-five thousand dollars (\$125,000). If the defendant is a*
35 *corporation, the maximum fine shall be two hundred fifty*
36 *thousand dollars (\$250,000).*

37 ~~(b)~~

38 (d) Any person who willfully and intentionally, or with
39 reckless disregard for the risk of great bodily injury, as defined
40 by Section 12022.7 of the Penal Code, to, or death of, any

person, emits an air contaminant in violation of Section 41700 that results in an unreasonable risk of great bodily injury to, or death of, any person, is liable for a civil penalty of not more than one hundred ~~twenty-five thousand dollars (\$125,000)~~ *one hundred fifty thousand dollars (\$150,000)*. If the violator is a corporation, the maximum penalty ~~may be up to~~ *is* five hundred thousand dollars (\$500,000).

(e)

(e) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person, emits an air contaminant in violation of Section 41700 that causes great bodily injury, as defined by Section 12022.7 of the Penal Code, to any person or that causes the death of any person, is liable for a civil penalty of not more than two hundred fifty thousand dollars (\$250,000). If the violator is a corporation, the maximum penalty may be up to one million dollars (\$1,000,000).

(f)

(f) Each day during any portion of which a violation occurs is a separate offense.

SEC. 17. Section 42402.4 of the Health and Safety Code is amended to read:

42402.4. Any person who knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, is liable for a civil penalty of not more than ~~thirty-five thousand dollars (\$35,000)~~ *one hundred thousand dollars (\$100,000)*.

SEC. 18. Section 42402.4.5 is added to the Health and Safety Code, to read:

42402.4.5. (a) Any person who knowingly violates any rule, regulation, permit, order, fee requirement, or filing requirement of the state board or of a district, including a district hearing board, that is adopted for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (l) of Section

1 112 of the Clean Air Act (42 U.S.C. Sec. 7412(l)), or the
2 regulations adopted pursuant thereto, is liable for a civil penalty
3 of not more than ten thousand dollars (\$10,000).

4 (b) (1) Any person who knowingly makes any false material
5 statement, representation, or certification in any form or in any
6 notice or report required by a rule or regulation adopted or
7 permit issued for the control of toxic air contaminants pursuant
8 to Part 1 (commencing with Section 39000) to Part 4
9 (commencing with Section 41500), inclusive, and for which
10 delegation or approval of implementation and enforcement
11 authority has been obtained pursuant to subdivision (l) of Section
12 112 of the Clean Air Act (42 U.S.C. Sec. 7412(l)), or the
13 regulations adopted pursuant thereto, or who knowingly renders
14 inaccurate any monitoring device required by that toxic air
15 contaminant rule, regulation, or permit is liable for a civil
16 penalty of not more than fifty thousand dollars (\$50,000).

17 (2) Any person who, with the intent to deceive, makes any false
18 material statement, representation, or certification in any form
19 or in any notice or report required by a rule or regulation
20 adopted or permit issued for the control of toxic air contaminants
21 pursuant to Part 1 (commencing with Section 39000) to Part 4
22 (commencing with Section 41500), inclusive, and for which
23 delegation or approval of implementation and enforcement
24 authority has been obtained pursuant to subdivision (l) of Section
25 112 of the federal Clean Air Act or the regulations adopted
26 pursuant thereto, or who with an intent to deceive renders
27 inaccurate any monitoring device required by that toxic air
28 contaminant rule, regulation, or permit, is liable for a civil
29 penalty of not more than one hundred thousand dollars
30 (\$100,000).

31 (c) Any person who, knowingly and with the intent to deceive,
32 falsifies any document required to be kept pursuant to any
33 provision of this part, or any rule, regulation, permit, notice to
34 comply, or order of the state board or of a district, is punishable
35 as provided in paragraph (2) of subdivision (b).

36 SEC. 19. Section 42402.6 is added to the Health and Safety
37 Code, to read:

38 42402.6. An act or omission that is punishable by different
39 civil penalties pursuant to different provisions of this article shall

1 *be punished under the provision that provides for the highest*
2 *maximum civil penalty.*

3 *SEC. 20. If the Commission on State Mandates determines*
4 *that this act contains costs mandated by the state, reimbursement*
5 *to local agencies and school districts for those costs shall be*
6 *made pursuant to Part 7 (commencing with Section 17500) of*
7 *Division 4 of Title 2 of the Government Code.*

8 ~~SEC. 3. Section 39604.3 is added to the Health and Safety~~
9 ~~Code, to read:~~

10 ~~39604.3. (a) (1) Notwithstanding Section 39604, the state~~
11 ~~board shall post on its Internet Web site, at a minimum by~~
12 ~~January 1 of each year, the same information on air quality~~
13 ~~violations that the districts provide to the United States~~
14 ~~Environmental Protection Agency. To protect confidentiality, the~~
15 ~~state board may require a password for certain areas of this~~
16 ~~Internet Web site.~~

17 ~~(2) The state board shall also provide links to all district~~
18 ~~Internet Web sites for information on other types of violations.~~

19 ~~(b) To enhance data compatibility with other state~~
20 ~~environmental agencies, each district shall submit to the state~~
21 ~~board the information described in subdivision (a), but in a~~
22 ~~format containing all of the following:~~

23 ~~(1) The name and address of the facility and the owner or~~
24 ~~operator of the facility.~~

25 ~~(2) The date the violation began and the number of days the~~
26 ~~violation occurred.~~

27 ~~(3) The method of the discovery of the violation.~~

28 ~~(4) The date the notice of violation was issued.~~

29 ~~(5) The date for initiating legal action and the civil and~~
30 ~~criminal penalties imposed or settlements agreed upon.~~

31 ~~(6) The state or federal law, regulation, or district rule~~
32 ~~violation by section or code number and a brief description.~~

33 ~~(7) The date the facility returned to compliance and paid the~~
34 ~~penalty.~~

35 ~~(e) To ensure that the state is aware of the amount of~~
36 ~~settlement moneys being contributed to the districts' Children's~~
37 ~~Breathing Rights Funds, and the amount of money subsequently~~
38 ~~awarded to particular organizations and entities pursuant to~~
39 ~~Section 42402.6, the districts shall report all of the following data~~

1 to the state board, at the same time that they report the data
2 required by subdivision (b):

3 (1) The name and address of the entity making the settlement.

4 (2) The name and address of the community or county clinic,
5 school, organization, asthma coalition, or other entity receiving
6 the settlement moneys.

7 (3) The amount of money and date of distribution.

8 (4) How the money is to be spent.

9 SEC. 4. Section 39674 of the Health and Safety Code is
10 amended to read:

11 39674. (a) Except as otherwise provided in subdivision (b),
12 any person who violates any rule or regulation, emission
13 limitation, permit condition, order, fee requirement, filing
14 requirement, duty to allow or carry out inspection or monitoring
15 activities, or duty to allow entry for which delegation or approval
16 of implementation and enforcement authority has been obtained
17 pursuant to subdivision (l) of Section 112 of the federal Clean
18 Air Act (42 U.S.C. Sec. 7412(l)) or the regulations adopted
19 pursuant thereto, adopted pursuant to Section 39659 or Article 4
20 (commencing with Section 39665) or which is implemented and
21 enforced as authorized by subdivision (b) of Section 39658 is
22 strictly liable for a civil penalty not to exceed ten thousand
23 dollars (\$10,000) for each day in which the violation occurs.

24 (b) Any person who violates any rule or requirement, emission
25 limitation, permit condition, order, fee requirement, filing
26 requirement, duty to allow or carry out inspection or monitoring
27 activities, or duty to allow entry for which delegation or approval
28 of implementation and enforcement authority has been obtained
29 pursuant to subdivision (l) of Section 112 of the federal Clean
30 Air Act or the regulations adopted pursuant thereto, adopted
31 pursuant to Section 39659 or Article 4 (commencing with
32 Section 39665), or which is implemented and enforced as
33 authorized by subdivision (b) of Section 39658 at a Title V
34 source is strictly liable for a civil penalty not to exceed fifty
35 thousand dollars (\$50,000) for each day in which the violation
36 occurs.

37 (c) Where a civil penalty in excess of five thousand dollars
38 (\$5,000) for each day of violation is sought, there is no liability
39 under subdivision (a) if the person accused of the violation
40 alleges by affirmative defense and establishes that the violation is

1 caused by an act that was not the result of intentional or negligent
2 conduct. In a district in which a Title V permit program has been
3 fully approved, this subdivision shall not apply to a violation of
4 federally enforceable requirements that occurs at a Title V
5 source.

6 SEC. 5. ~~Section 42400 of the Health and Safety Code is~~
7 ~~amended to read:~~

8 42400. (a) (1) ~~Except as otherwise provided in paragraph~~
9 ~~(2), or Section 42400.1, 42400.2, 42400.3, or 42400.3.5, any~~
10 ~~person who violates this part, or any rule, regulation, permit, or~~
11 ~~order of the state board or of a district, including a district~~
12 ~~hearing board, adopted pursuant to Part 1 (commencing with~~
13 ~~Section 39000) to Part 4 (commencing with Section 41500),~~
14 ~~inclusive, is guilty of a misdemeanor and is subject to a fine of~~
15 ~~not more than ten thousand dollars (\$10,000) or imprisonment in~~
16 ~~the county jail for not more than six months, or both.~~

17 (2) ~~Notwithstanding paragraph (1) and except where a greater~~
18 ~~penalty is authorized by law, any person who violates this part, or~~
19 ~~any rule, regulation, permit, or order of the state board or of a~~
20 ~~district, including a district hearing board, adopted pursuant to~~
21 ~~Part 1 (commencing with Section 39000), Part 2 (commencing~~
22 ~~with Section 39500), Part 3 (commencing with Section 40000),~~
23 ~~or Part 4 (commencing with Section 41500) at a Title V source is~~
24 ~~guilty of a misdemeanor and is subject to a fine of not more than~~
25 ~~fifty thousand dollars (\$50,000) or imprisonment in the county~~
26 ~~jail for not more than one year, or both.~~

27 (b) ~~If a violation under subdivision (a) with regard to the~~
28 ~~failure to operate a vapor recovery system on a gasoline cargo~~
29 ~~tank is directly caused by the actions of an employee under the~~
30 ~~supervision of, or of any independent contractor working for, any~~
31 ~~person subject to this part, the employee or independent~~
32 ~~contractor, as the case may be, causing the violation is guilty of a~~
33 ~~misdemeanor and is punishable as provided in subdivision (a).~~
34 ~~That liability shall not extend to the person employing the~~
35 ~~employee or retaining the independent contractor, unless that~~
36 ~~person is separately guilty of an action that violates this part.~~

37 (c) ~~Except as otherwise provided in paragraph (2) of~~
38 ~~subdivision (a), any person who owns or operates any source of~~
39 ~~air contaminants in violation of Section 41700 that diminishes air~~
40 ~~quality and causes a substantial risk of actual injury, whether the~~

1 risk of injury is immediate or in the future, is guilty of a
2 misdemeanor and is subject to a fine of not more than
3 twenty-five thousand dollars (\$25,000) or imprisonment in the
4 county jail for not more than nine months or both.

5 (d) Except as provided in paragraph (2) of subdivision (a), any
6 person who owns or operates any source of air contaminants in
7 violation of Section 41700 that causes actual injury, as defined in
8 subdivision (d), to the health or safety of a considerable number
9 of persons or the public is guilty of a misdemeanor and is subject
10 to a fine of not more than fifty thousand dollars (\$50,000) or
11 imprisonment in the county jail for not more than nine months, or
12 both.

13 (e) As used in this section, “actual injury” means any physical
14 injury that, in the opinion of a licensed physician and surgeon,
15 requires medical treatment involving more than a physical
16 examination.

17 (f) Each day during any portion of which a violation of
18 subdivision (a) or (e) occurs is a separate offense.

19 SEC. 6. Section 42400.1 of the Health and Safety Code is
20 amended to read:

21 42400.1. (a) Except as otherwise provided in paragraph (2)
22 of subdivision (a) of Section 42400, any person who negligently
23 emits an air contaminant in violation of this part or any rule,
24 regulation, permit, or order of the state board or of a district
25 pertaining to emission regulations or limitations is guilty of a
26 misdemeanor and is punishable by a fine of not more than
27 twenty-five thousand dollars (\$25,000), or imprisonment in the
28 county jail for not more than nine months, or both.

29 (b) Any person who negligently emits an air contaminant in
30 violation of Section 41700 that causes great bodily injury, as
31 defined by Section 12022.7 of the Penal Code, to, or death of,
32 any person, is guilty of a misdemeanor and is punishable by a
33 fine of not more than one hundred thousand dollars (\$100,000),
34 or imprisonment in the county jail for not more than one year, or
35 both.

36 (c) Each day during any portion of which a violation occurs is
37 a separate offense.

38 SEC. 7. Section 42400.2 of the Health and Safety Code is
39 amended to read:

1 ~~42400.2.— (a) Except as otherwise provided in paragraph (2)~~
2 ~~of subdivision (a) of Section 42400, any person who emits an air~~
3 ~~contaminant in violation of any provision of this part, or any~~
4 ~~order, rule, regulation, or permit of the state board or of a district~~
5 ~~pertaining to emission regulations or limitations, and who knew~~
6 ~~of the emission and failed to take corrective action within a~~
7 ~~reasonable period of time under the circumstances, is guilty of a~~
8 ~~misdemeanor and is subject to a fine of not more than forty~~
9 ~~thousand dollars (\$40,000), or imprisonment in the county jail for~~
10 ~~not more than one year, or both.~~

11 ~~(b) For purposes of this section, “corrective action” means the~~
12 ~~termination of the emission violation or the grant of a variance~~
13 ~~from the applicable order, rule, regulation, or permit pursuant to~~
14 ~~Article 2 (commencing with Section 42350). If a district~~
15 ~~regulation regarding process upsets or equipment breakdowns~~
16 ~~would allow continued operation of equipment which is emitting~~
17 ~~air contaminants in excess of allowable limits, compliance with~~
18 ~~that regulation is deemed to be corrective action.~~

19 ~~(c) Any person who owns or operates any source of air~~
20 ~~contaminants in violation of Section 41700 that causes great~~
21 ~~bodily injury, as defined by Section 12022.7 of the Penal Code,~~
22 ~~to, or death of, any person, and who knew of the emission and~~
23 ~~failed to take corrective action within a reasonable period of time~~
24 ~~under the circumstances, is guilty of a misdemeanor and is~~
25 ~~subject to a fine of not more than two hundred fifty thousand~~
26 ~~dollars (\$250,000), or imprisonment in the county jail for not~~
27 ~~more than one year, or both.~~

28 ~~(d) Each day during any portion of which a violation occurs~~
29 ~~constitutes a separate offense.~~

30 ~~SEC. 8. Section 42400.3.5 of the Health and Safety Code is~~
31 ~~amended to read:~~

32 ~~42400.3.5. (a) Except as otherwise provided in paragraph (2)~~
33 ~~of subdivision (a) of Section 42400, any person who knowingly~~
34 ~~violates any rule, regulation, permit, order, fee requirement, or~~
35 ~~filing requirement of the state board or of a district, including a~~
36 ~~district hearing board, that is adopted for the control of toxic air~~
37 ~~contaminants pursuant to Part 1 (commencing with Section~~
38 ~~39000) to Part 4 (commencing with Section 41500), inclusive,~~
39 ~~and for which delegation or approval of implementation and~~
40 ~~enforcement authority has been obtained pursuant to subdivision~~

~~(f) of Section 112 of the federal Clean Air Act (42 U.S.C. Sec. 7412(f)), or the regulations adopted pursuant thereto, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment in the county jail for not more than six months, or both.~~

~~(b) Except as otherwise provided in paragraph (2) of subdivision (a) of Section 42400, any person who knowingly makes any false material statement, representation, or certification in any form or in any notice or report required by a rule or regulation adopted or permit issued for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (f) of Section 112 of the federal Clean Air Act or the regulations adopted pursuant thereto, or who knowingly renders inaccurate any monitoring device required by that toxic air contaminant rule, regulation, or permit is subject to a fine of not more than thirty-five thousand dollars (\$35,000) or imprisonment in the county jail for not more than nine months, or both.~~

~~(c) Except as otherwise provided in paragraph (2) of subdivision (a) of Section 42400, any person who, knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, notice to comply, or order of the state board or of a district, is punishable as provided in subdivision (b).~~

~~SEC. 9. Section 42400.4 of the Health and Safety Code is repealed.~~

~~SEC. 10. Section 42400.7 of the Health and Safety Code is amended to read:~~

~~42400.7. (a) The recovery of civil penalties pursuant to Section 39674, 42401, 42402, 42402.1, 42402.2, or 42402.3 precludes prosecution under Section 42400, 42400.1, 42400.2, 42400.3, or 42400.3.5 for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.~~

~~(b) If the pending civil action described in subdivision (a) includes a request for injunctive relief, that portion of the civil~~

1 ~~action shall not be dismissed upon the filing of a criminal~~
2 ~~complaint for the same offense.~~

3 ~~SEC. 11. Section 42401 of the Health and Safety Code is~~
4 ~~amended to read:~~

5 ~~42401. Except as otherwise provided in subdivision (b) of~~
6 ~~Section 42402, any person who intentionally or negligently~~
7 ~~violates any order of abatement issued by a district pursuant to~~
8 ~~Section 42450, by a hearing board pursuant to Section 42451, or~~
9 ~~by the state board pursuant to Section 41505, is liable for a civil~~
10 ~~penalty of not more than twenty-five thousand dollars (\$25,000)~~
11 ~~for each day in which the violation occurs.~~

12 ~~SEC. 12. Section 42402 of the Health and Safety Code is~~
13 ~~amended to read:~~

14 ~~42402. (a) Except as provided in Sections 42402.1, 42402.2,~~
15 ~~42402.3, and 42402.4, any person who violates this part, any~~
16 ~~order issued pursuant to Section 42316, or any rule, regulation,~~
17 ~~permit, or order of a district, including a district hearing board, or~~
18 ~~of the state board issued pursuant to Part 1 (commencing with~~
19 ~~Section 39000) to Part 4 (commencing with Section 41500);~~
20 ~~inclusive, is strictly liable for a civil penalty of not more than ten~~
21 ~~thousand dollars (\$10,000).~~

22 ~~(b) Notwithstanding subdivision (a) and except where a~~
23 ~~greater penalty is authorized by law, any person who violates this~~
24 ~~part, any order issued pursuant to Section 42316, or any rule,~~
25 ~~regulation, permit, or order of a district, including a district~~
26 ~~hearing board, or of the state board issued pursuant to Part 1~~
27 ~~(commencing with Section 39000), Part 2 (commencing with~~
28 ~~Section 39500), Part 3 (commencing with Section 40000), or Part~~
29 ~~4 (commencing with Section 41500) at a Title V source is strictly~~
30 ~~liable for a civil penalty in an amount not more than fifty~~
31 ~~thousand dollars (\$50,000).~~

32 ~~(c) (1) Except as specified in paragraphs (2) and (3), if a civil~~
33 ~~penalty in excess of five thousand dollars (\$5,000) for each day~~
34 ~~in which a violation occurs is sought, there is no liability under~~
35 ~~subdivision (a) if the person accused of the violation alleges by~~
36 ~~affirmative defense and establishes that the violation was caused~~
37 ~~by an act that was not the result of intentional nor negligent~~
38 ~~conduct.~~

39 ~~(2) This subdivision does not apply to a violation of federally~~
40 ~~enforceable requirements that occur at a Title V source in a~~

1 district in which a Title V permit program has been fully
2 approved.

3 (3) This subdivision does not apply to a person who is
4 determined to have violated an annual facility emissions cap
5 established pursuant to a market-based incentive program
6 adopted by a district pursuant to subdivision (b) of Section
7 39616.

8 (d) Any person who owns or operates any source of air
9 contaminants in violation of Section 41700 is liable for a civil
10 penalty of not more than fifteen thousand dollars (\$15,000).
11 Where a violation of Section 41700 affects a school, hospital, or
12 licensed care facility for children or the elderly, each person,
13 entity, or property affected by the discharge in violation of
14 Section 41700 is a separate offense. This subdivision shall not
15 limit the imposition of any penalty pursuant to any other
16 provision of law.

17 (e) Any person who owns or operates any source of air
18 contaminants in violation of Section 41700 that causes actual
19 injury, as defined in subdivision (d) of Section 42400, to the
20 health and safety of a considerable number of persons or the
21 public, is liable for a civil penalty of not more than fifty thousand
22 dollars (\$50,000).

23 (f) Each day during any portion of which a violation occurs is
24 a separate offense.

25 SEC. 13. Section 42402.1 of the Health and Safety Code is
26 amended to read:

27 42402.1. (a) Except as otherwise provided in subdivision (b)
28 of Section 42402, any person who negligently emits an air
29 contaminant in violation of this part or any rule, regulation,
30 permit, or order of the state board or of a district, including a
31 district hearing board, pertaining to emission regulations or
32 limitations is liable for a civil penalty of not more than
33 twenty-five thousand dollars (\$25,000).

34 (b) Any person who negligently emits an air contaminant in
35 violation of Section 41700 that causes great bodily injury, as
36 defined by Section 12022.7 of the Penal Code, to any person or
37 that causes the death of any person, is liable for a civil penalty of
38 not more than one hundred thousand dollars (\$100,000).

39 (c) Each day during any portion of which a violation occurs is
40 a separate offense.

1 ~~SEC. 14. Section 42402.2 of the Health and Safety Code is~~
2 ~~amended to read:~~

3 ~~42402.2. (a) Except as otherwise provided in subdivision (b)~~
4 ~~of Section 42402, any person who emits an air contaminant in~~
5 ~~violation of any provision of this part, or any order, rule,~~
6 ~~regulation, or permit of the state board or of a district, including~~
7 ~~a district hearing board, pertaining to emission regulations or~~
8 ~~limitations, and who knew of the emission and failed to take~~
9 ~~corrective action, as defined in subdivision (b) of Section~~
10 ~~42400.2, within a reasonable period of time under the~~
11 ~~circumstances, is liable for a civil penalty of not more than forty~~
12 ~~thousand dollars (\$40,000).~~

13 ~~(b) Any person who owns or operates any source of air~~
14 ~~contaminants in violation of Section 41700 that causes great~~
15 ~~bodily injury, as defined by Section 12022.7 of the Penal Code,~~
16 ~~to any person or that causes the death of any person, and who~~
17 ~~knew of the emission and failed to take corrective action, as~~
18 ~~defined in subdivision (b) of Section 42400.2, within a~~
19 ~~reasonable period of time under the circumstances, is liable for a~~
20 ~~civil penalty not to exceed two hundred fifty thousand dollars~~
21 ~~(\$250,000).~~

22 ~~(c) Each day during any portion of which a violation occurs is~~
23 ~~a separate offense.~~

24 ~~SEC. 15. Section 42402.4 of the Health and Safety Code is~~
25 ~~amended to read:~~

26 ~~42402.4. Except as otherwise provided in subdivision (b) of~~
27 ~~Section 42402, any person who knowingly and with intent to~~
28 ~~deceive, falsifies any document required to be kept pursuant to~~
29 ~~any provision of this part, or any rule, regulation, permit, or order~~
30 ~~of the state board or of a district, including a district hearing~~
31 ~~board, is liable for a civil penalty of not more than thirty-five~~
32 ~~thousand dollars (\$35,000).~~

33 ~~SEC. 16. Section 42402.6 is added to the Health and Safety~~
34 ~~Code, to read:~~

35 ~~42402.6. (a) If a district enters into a settlement agreement,~~
36 ~~part of that agreement may include directing a portion of the~~
37 ~~settlement funds to a program of financial assistance established~~
38 ~~in each district, known as the Children's Breathing Rights Fund.~~

39 ~~(b) Moneys in the districts' Children's Breathing Rights Funds~~
40 ~~shall be allocated and awarded annually to community and~~

1 county clinics, schools, organizations, asthma coalitions, and
2 other entities engaged in or promoting asthma care management,
3 asthma prevention activities, and lung health, and other programs
4 and activities addressing health problems related to air pollution
5 in the district. Asthma care management and prevention activities
6 may include, but are not be limited to, the provision of education
7 and medication to children with asthma and their families,
8 training of asthma care providers, and training of community
9 health workers for in-home visits.

10 (e) Each district shall create and utilize an advisory committee,
11 comprised of at least five persons with knowledge of asthma care
12 management or prevention and other health problems related to
13 air pollution to determine how moneys in the fund are to be
14 allocated and awarded. Persons who serve on the committee shall
15 receive no compensation for their service.

16 (d) No materials or activities produced or funded with
17 settlement moneys contributed to a district's Children's
18 Breathing Rights Fund shall display the logo or name of the
19 entity making the settlement.

20 SEC. 17. Section 42403 of the Health and Safety Code is
21 amended to read:

22 42403. (a) The civil penalties prescribed in Sections 39674,
23 42401, 42402, 42402.1, 42402.2, 42402.3, and 42409.5 shall be
24 assessed and recovered in a civil action brought in the name of
25 the people of the State of California by the Attorney General, by
26 any district attorney, or by the attorney for any district in which
27 the violation occurs in any court of competent jurisdiction.

28 (b) In determining the amount assessed, the court, or in
29 reaching any settlement, the district, shall take into consideration
30 all relevant circumstances, including, but not limited to, the
31 following:

- 32 (1) The extent of harm caused by the violation.
- 33 (2) The nature and persistence of the violation.
- 34 (3) The length of time over which the violation occurs.
- 35 (4) The frequency of past violations.
- 36 (5) The record of maintenance.
- 37 (6) The unproven or innovative nature of the control
38 equipment.

1 ~~(7) Any action taken by the defendant, including the nature,~~
2 ~~extent, and time of response of the cleanup and construction~~
3 ~~undertaken, to mitigate the violation.~~

4 ~~(8) The financial burden to the defendant.~~

5 SEC. 18. ~~Section 42409.5 is added to the Health and Safety~~
6 ~~Code, to read:~~

7 ~~42409.5.— (a) On and after June 1, 2007, any serious violator~~
8 ~~shall be liable for a civil penalty of not more than one hundred~~
9 ~~thousand dollars (\$100,000) per day for each violation described~~
10 ~~by this article, subject to consideration of the criteria set forth in~~
11 ~~subdivision (b) of Section 42403, in addition to any other penalty~~
12 ~~prescribed by this article.~~

13 ~~(b) For the purposes of this section, “serious violator” includes~~
14 ~~any person who does any of the following:~~

15 ~~(1) Purposely or knowingly disconnects or disables any~~
16 ~~monitoring device or method required by an operating permit.~~

17 ~~(2) Purposely or knowingly makes any false material~~
18 ~~statement, representation, or certification in any form, notice,~~
19 ~~statement, or report required in connection with a permit.~~

20 ~~(3) Commits one or more high priority violations pursuant to~~
21 ~~the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.). For~~
22 ~~purposes of this paragraph, “high priority violation” means an act~~
23 ~~that is a high priority violation under the high priority violation~~
24 ~~policy of the United States Environmental Protection Agency, as~~
25 ~~set forth in “THE TIMELY AND APPROPRIATE (T&A)~~
26 ~~ENFORCEMENT RESPONSE TO HIGH PRIORITY~~
27 ~~VIOLATIONS (HPVs)” issued in December of 1998, and the~~
28 ~~EPA Office of Enforcement and Compliance Assurance~~
29 ~~“WORKBOOK: The Timely and Appropriate (T&A)~~
30 ~~Enforcement Response to High Priority Violations (HPVs),”~~
31 ~~issued June 23, 1999.~~

32 SEC. 19. ~~If the Commission on State Mandates determines~~
33 ~~that this act contains costs mandated by the state, reimbursement~~
34 ~~to local agencies and school districts for those costs shall be~~
35 ~~made pursuant to Part 7 (commencing with Section 17500) of~~
36 ~~Division 4 of Title 2 of the Government Code.~~